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GOVERNOR'S MESSAGE.

STATE OF ILLINOIS, EXECUTIVE DEPARTMENT,
SPRINGFIELD, November 22, 1915.

To the Honorable, the General Assembly of Illinois:

The recent decision of the Supreme Court, in the suit of *Fergus et al. v. Russel et al.* invalidating a large number of appropriations made by the Forty-ninth General Assembly, makes necessary the holding of this special session.

Many persons holding positions under the State government who were believed by the Legislature to be employees rather than State officers, and, therefore, appropriated for in the Omnibus Bill as such, are declared in the decision of the Supreme Court to be State officers, and by reason of this fact the appropriations for these offices should be made in a separate State Officers' Bill. The result of this decision makes it the duty of this Legislature, and of every subsequent Legislature, to exercise the greatest care in determining whether or not a person on the pay roll of the State is a "State Officer" or an "employee."

To use the language of the Supreme Court: "A difficult task is set for the Legislature to determine who are and who are not officers." None the less this difficult task must be assumed by this and subsequent Legislatures.

The Legislative Reference Bureau has prepared a summary indicating what positions the Supreme Court has held to be State employees for which appropriations should be made in a State officers' appropriation bill. Many of the persons filling these positions affected by the decision of the Supreme Court have been seriously embarrassed financially for several months past and prompt action should be taken to relieve their necessities by the passage of a valid appropriation bill or bills.

As the result of the Supreme Court's decision further and additional appropriations, in order to provide for the ordinary and contingent expenses of the State government until the expiration of the fiscal quarter after the adjournment of the next regular session of the General Assembly, will be necessary.

By an oversight of the Legislature the unexpended appropriations in the State treasury appropriated by the Forty-eighth General Assembly to the Panama-Pacific International Commissioner of Illinois were not reappropriated at the regular session of the Forty-ninth General Assembly. The work of the commissioner is unfinished and it cannot be finished until some time after the close of the Panama-Pacific International Exposition. An ample balance of the funds appropriated by the Forty-eighth General Assembly remains to finish up the work and pay the expenses and obligations of the commissioner, and an appropriation equal to the amount of the unexpended balance,

or so much thereof as may be necessary, should be made to enable the commissioner to pay the employees, remove the building from the fair grounds and close up the accounts of the commissioner. I, therefore, respectfully recommend that an appropriation be made for that purpose.

I am informed by the judges of the Appellate Courts of the first and second districts, that extra appropriations are absolutely necessary to enable them to carry on, successfully, the business of their courts. The Appellate Court of the first district has moved its offices in the City of Chicago to a more commodious and suitable place, and the cost of moving was not provided for in the appropriations made at the regular session of the Forty-ninth General Assembly. I, therefore, respectfully recommend that an appropriation be made for these purposes.

The Attorney General reports to me that as the result of the Fergus suits, additional appropriations are needed for his office to enable him to perform and carry out the duties imposed upon his office thereby.

I, therefore, recommend that the necessary appropriations be made.

The city authorities of the City of Chicago have represented to me that owing to the passage of many recent acts by the Legislature, imposing additional financial burdens upon the city, that amendments to certain laws affecting the revenues of the city are necessary. They further represent that it is necessary, as the result of the recent decision of the Supreme Court, that certain laws be passed validating certain appropriations hitherto made by the city council.

I, therefore, respectfully recommend that you give careful consideration to the suggestions of the city officials in reference to these matters and pass such legislation as may be found necessary under the terms of the proclamation for a special session.

The county authorities of Cook County claim that certain financial burdens have been imposed upon the county by the passage of recent laws by the Legislature, and that it is necessary that certain laws relating to the levying of taxes should be amended so as to enable the county to meet these burdens.

I, therefore, recommend that careful consideration be given to the suggestions of the county officials in reference to these matters, and that laws be enacted which will enable the county to meet its financial obligations, imposed upon it by laws enacted by the last Legislature.

I am advised that there are certain defects in the law relating to the issuance of bonds for the building of roads, which make it difficult, if not impossible, to negotiate bonds issued for road building, which I regard as one of the most important needs of the community. Our State, in comparison with other progressive states, lags behind in the progress of modern road building. If the laws relating to road building are amended so as to provide for the issuance of legal bonds, marked progress can be made in the way of road building. Financial authorities report to me that money is abundant and can be loaned upon valid bonds at very low rates of interest at the present time.

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I, therefore, recommend the amendment of the laws relating to road and bridge building so as to encourage the building of good roads throughout the State of Illinois.

Preliminary arrangements were made by the Forty-eighth and Forty-ninth General Assemblies for the celebration of the one hundredth anniversary of the admission of the State of Illinois into the Union. Much effective work has been done by the commission heretofore appointed for that purpose and much yet remains to be done. The decision of the Supreme Court holds that the commission appointed by the Legislature for this purpose has no legal existence.

It, therefore, becomes necessary, if the objects sought by the Legislature to be attained, which are commendable and praiseworthy, are to be carried out, that a law be enacted by this Legislature creating such a commission and providing it with funds for the performance of its duties.

I recommend the passage of such legislation.

Many pension laws have recently been passed by the Legislature. Prior to the passage of such laws, little, if any, investigation was made into the actuarial features of such laws. The Forty-ninth General Assembly has wisely provided for a commission to collect information in regard to the operation of similar laws in other states and countries and to make recommendations upon the subject to the next General Assembly.

This commission was appointed by the Governor under authority of a joint resolution of the Forty-ninth General Assembly. A question as to the validity of this commission is raised by the decision of the Supreme Court, which holds that commissions appointed by joint resolutions of the Legislature are invalid.

I, therefore, recommend the enactment of a law creating a new Pension Commission, giving it the power to collect information with reference to the present and future cost of pension laws, and to collect information in regard to the operation of similar laws in other states and countries, and to give said commission authority to make recommendations upon this subject to the next General Assembly, and to provide an appropriation to pay for the cost and expenses of such a commission.

I am advised by the Attorney General that it will be necessary to enact certain laws amending the acts creating many public offices in order to fix the salaries to pay the incumbents of such offices.

I, therefore, recommend the passage of such amending laws.

I am advised by the State Treasurer that the decision in the Fergus case necessitates in his office the employment of an additional accountant and clerk and an additional appropriation, which I respectfully recommend.

By reason of the decision in the Fergus case an appropriation to pay the salaries of certain State officers, who were provided for in the Omnibus Bill, becomes necessary, and I, therefore, recommend the making of an appropriation in a State Officers' Bill for the payment of such salaries.

The Forty-ninth General Assembly amended the law relating to Free Employment Offices by creating a General Advisory Board, but

by an oversight omitted to make an appropriation for the expenses of said General Advisory Board.

I, therefore, recommend that at this session an appropriation be made for the payment of the expenses of the General Advisory Board of the Illinois Free Employment Offices.

By an oversight of the regular session of the Forty-ninth General Assembly, no appropriation was made for the payment of salaries and expenses of the Board of Structural Engineers.

I, therefore, recommend the passage of an appropriation for the payment of salaries and expenses of said Board of Structural Engineers.

I respectfully recommend, upon the suggestion of the Warden of the Illinois State Penitentiary, further and additional appropriations to enable him to carry on the work at said penitentiary.

At a recent conference of the Governors of the different states of the United States, it seemed to be the consensus of opinion, that in popular estimation the governors of the different states were being held responsible for the size of the appropriations made in appropriation laws throughout the different states, while under the laws of the states, the governors have no control over the size of these appropriations, excepting by the exercise of the veto power, and that the authority given by the veto was wholly inadequate and impractical in its application.

If a Governor is to be held responsible for the size of the appropriations made in his state, he should be given power in some way to control these appropriations. There are but two ways in which such control can be effectively placed in the hands of the executive. Firstly, by authorizing him to originate appropriation bills and recommending the same to the Legislature with the right of placing a maximum limitation upon appropriations in such recommendations; or secondly, by giving the executive the right to veto items and *parts and portions of items* in all appropriation bills. The first is the most effective method of centering responsibility upon the Governor. Under the laws and Constitution of the State of Illinois, and of most if not all of the states of the United States, that power is not vested, at the present time, in the Governor.

Recognizing the advisability of such authority being vested in the Executive, and then holding him responsible for the size of appropriations as the result thereof, the recent Constitutional Convention of the State of New York recommended to the people the adoption of a constitutional provision giving the right to the governor to originate all appropriation bills in the administrative departments of the state government. If it were possible to propose such a constitutional amendment at the present time in this State, I would recommend to your honorable body the proposal of an amendment to the Constitution of this State giving such power to the Governor.

At the regular session of the Forty-ninth General Assembly, however, a constitutional amendment was proposed for submission to the people. The proposal of this amendment prevents, as I am advised, the proposal of any other amendment to the same article at this session, and thus prevents any action in the way of amending the constitution

along the line of giving such authority to the Governor. In the absence of such power being vested in the Executive, the only other way the Governor can control the size of appropriations is by the exercise of the veto power. In the exercise of the veto power in this State, the Governor, under the Constitution as construed in the Fergus case, can only veto a bill in its entirety or one or more items in an appropriation bill in its or their entirety.

Under the decision in the Fergus case, the Governor has not the constitutional right to reduce the amount of an appropriation in an item. His only right is to approve items in their entirety or disapprove them in their entirety. If the Governor be of the opinion that an appropriation in any item is excessive his only right is to destroy the whole item by veto, or let it stand or take no action at all. It results from this situation that a Governor may frequently be compelled to allow items to stand in an appropriation bill, which, in his judgment, are in excess of the needs of the State, and that he cannot in fact control the amount of the appropriation. If the item in its entirety be vetoed the department of the State government for which the appropriation is made may be seriously crippled and its efficiency destroyed, and if the item be allowed to stand in its entirety excessive appropriations may result. As the Executive cannot in the present situation be placed in a position by a constitutional amendment where he can originate and control appropriations by recommendations to the Legislature, the next best thing, in my judgment, is to give the Executive power to control appropriations by giving him the right to veto parts and portions of items in an appropriation bill.

I believe in making this recommendation that I am not actuated by personal lust of power. Who ever fills the office of Governor will be charged by many of his fellow citizens with the responsibility of controlling the size of appropriation bills, without having any real power, either by initiation or by correctional veto, to effectually control the same. Either the Executive should be relieved of all responsibility as to the size of appropriations or he should be given power to effectually control the same. If it is wise to place responsibility upon the Executive it is also wise to give him the power to shoulder such responsibility. Responsibility must be placed somewhere, either upon the Legislative Department or upon the Executive, and where responsibility is placed there should the power be placed to control.

My attention has been called to the fact that there is flat contradiction in the law which provides for the holding of primary elections by political parties, sometimes called the law regarding preferential presidential primaries. In one section of the law it is declared that delegates to National conventions must be elected at the primary by popular vote, and in another section it is declared that delegates to National conventions must be elected at Congressional conventions. Other defects and omissions are said to exist in the law.

I, therefore, recommend that all doubt be cleared up upon these points by the amendment of the law at this session.

The Supreme Court in its decision of the so-called Fergus case has definitely settled the question of the right of a citizen and taxpayer to file a bill against the disbursing officers of the State govern-

ment to restrain the payment of State money under appropriations alleged to be illegal or unconstitutional. This in the absence of any statutory provision on the subject.

I have given careful consideration to this matter, have been advised by the Attorney General and am of the opinion that a subject of such importance, fraught with so many possibilities of embarrassment to the business of the State, should be controlled by statute to the end that practice in cases of that character will be uniform in the future and that delay may be avoided in the final determination of the questions which may be raised. In a proper case no reasonable objection should be raised to the filing of a bill by a citizen and taxpayer to question the legality of an appropriation of public money, but on the other hand trivial and vexatious actions which may arise in the future should be controlled by some recognized authority, and with this object and end in view I have caused to be prepared, and will submit to you for your consideration, a bill regulating the practice and procedure in such cases.

This bill provides that before a citizen and taxpayer can file a bill of complaint and secure an injunction, tying up the State funds, he must first apply to the Circuit Court of the proper county for leave to file his bill of complaint and the Circuit Court will order notice to be given to the Attorney General and to the defendants and set a day for a hearing, within a period of ten days, and on such hearing, if the court is satisfied that the cause of action is a meritorious one, the court may grant leave to file the bill of complaint. In vacation the same procedure may be taken by a judge of the Circuit Court. If on the hearing the court or judge is satisfied there is no merit in the action, he may deny the complainant the leave to file his bill of complaint. In such case the complainant has the right of appeal to the Supreme Court from the refusal of the court or judge to grant the permission to file.

This bill further provides that a hearing must be had immediately, either in term time or vacation, and that either party may appeal from the final decision of the court or judge to the Supreme Court and that such case shall have precedence over all other cases to the end that a prompt decision may be had. This is the same procedure which has prevailed by law in this State for a great many years relative to quo warranto proceedings. In other cases in court permission of court must first be had before suit may be started, as for instance in suits against receivers and other officers of that character. This will not deny to any citizen all the privileges which he now has to question the legality or constitutionality of an appropriation. It does not close the door on any meritorious cause of action but it simply protects the State against trivial or causeless actions without any merit in them and provides for a prompt trial of the case when it is started. The Attorney General now has the power to institute suits of this character and that right is not interfered with in this bill, but the same provisions relative to the prompt trial and disposition of the case applies to a suit instituted by the Attorney General, the same as a suit instituted by a private citizen.

Under the Practice Act as it now reads, any citizen in any circuit of the State where he can obtain service upon the State Treasurer and

State Auditor, may institute suits for injunction restraining the payment of public officials' salaries, and the payment of appropriations made by the Legislature, without giving a bond, and without being compelled to go to an early trial. He may file a bill for injunction and not apply for an injuntion, temporary or permanent, until the case is reached for trial many months after it is filed.

If it were filed in Cook County in the regular order it would not be reached for many months. In the meantime the State Treasurer and the State Auditor, being given notice of the filing of the bill, naturally, to protect themselves, will decline to pay out any public moneys, and public officials are thus deprived of their income and placed at the mercy of loan sharks. There is no remedy against the complainant should the bill turn out to be without foundation in law or fact.

In the proclamation calling for a special session I have also provided for the consideration and passage of appropriations for the payment of salaries of certain officers whose salaries are fixed by statute, which said salaries were attempted to be appropriated for in and by an act entitled "An Act to provide for the ordinary and contingent expenses of the State government, until the expiration of the fiscal quarter after the adjournment of the next regular session of the General Assembly," approved June 29, 1915, in force July 1, 1915, and for an amendment of the act to regulate the practice of medicine in the State of Illinois, all of which I commend to your honorable body.

Many valuable suggestions for the amendment and passage of other laws have reached me from many sources, which I have not provided for in my proclamation for the reason that I did not want to burden the Legislature at a special session with matters that were not, in their nature, of an emergency character and which might fairly be deferred until the next regular session without serious injury to the State.

Respectfully submitted,

E. F. DUNNE, *Governor.*

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